



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

JMK:GKS/AES  
F. #2014R00501

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Brooklyn, New York 11201*

July 26, 2017

By Hand and ECF

Hon. Kiyo A. Matsumoto  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: United States v. Martin Shkreli  
Criminal Docket No. 15-637 (KAM)

Dear Judge Matsumoto:

The government respectfully submits this letter with one objection to the Court's second draft jury instructions. (Dkt. No. 290.)

On pages 36 and 37 of the second draft jury instructions, the Court modified the first sentence of the first element of securities fraud (Fraudulent Act) to read: "The first element that the government must prove beyond a reasonable doubt is that, in connection with the purchase or sale of a security in MSMB Capital for Count Three and MSMB Healthcare for Count Six, Mr. Shkreli knowing and intentionally did one or more of the following: . . ." (Dkt. No. 290 at 36-37.) The Court's first draft jury instructions did not include the phrase "knowing and intentionally" and neither party requested a modification to this language at the charge conference on July 26, 2017. (Dkt. No. 286 at 34.)s

The government respectfully submits that the phrase "knowing and intentionally" should not be included in the Court's discussion of the first element of securities fraud. The intent standard for securities fraud is discussed in detail starting on page 42 of the second draft jury instructions and the first element of securities fraud—the requirement of a fraudulent act—is distinct. (Dkt. No. 290 at 42.) Furthermore, the pattern jury instructions do not include the phrase "knowing and intentionally" or any other language regarding the intent standard in connection with the first element of securities fraud: "The first element that the government must prove beyond a reasonable doubt is that in connection with the purchase or sale of (insert name of stock) the defendant did any one or more of the following: . . ." Sand, et al., Modern Federal Jury Instructions, Instruction 57-21.

